

7

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

DOCKET FILE COPY ORIGINAL

MAR 25 1997

In the Matter of)

Assessment and Collection)
of Regulatory Fees for)
Fiscal Year 1997)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

MD Docket No. 96-186

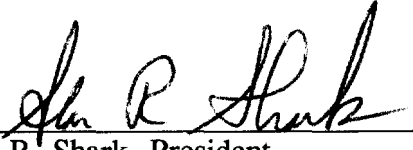
To: The Commission

COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By: _____


Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 Nineteenth Street, N.W. - 12th Floor
Washington, D.C. 20036
(202) 857-3500

No. of Copies rec'd 0211
List A B O D E

March 25, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments in response to the Commission's Notice of Proposed Rulemaking regarding the assessment and collection of regulatory fees for fiscal year ("FY") 1997.¹ These comments seek clarification of certain aspects of the FCC's proposals.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band.

2. The Association's members had been classified as private carriers prior to the 1993 amendments to the Communications Act.² Pursuant to the Budget Act, the regulatory distinction between private and common carriage was replaced by a Commercial Mobile Radio Service ("CMRS") versus Private Mobile Radio Service ("PMRS") analysis. Private carrier systems considered to meet the CMRS definition of providing interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, were reclassified as CMRS licensees. However, the Budget Act also provided a three-year transition period pursuant to which private carrier licensees authorized prior to August 10, 1993 would continue to be regulated as private carriers,

¹ Notice of Proposed Rule Making, MD Docket No. 96-186, FCC 97-49, 12 FCC Rcd ____ (rel. March 5, 1997)("FY 1997 NPRM").

² Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 ("Budget Act").

not CMRS, until August 10, 1996.³ Only those qualified private carriers whose initial licenses in a service were issued after the August 10, 1993 deadline were treated as CMRS prior to expiration of the three-year transition period. AMTA's Comments in this proceeding relate to issues raised by the transition from private carrier to CMRS status.

II. COMMENTS

A. **The Commission Should Reaffirm That Any Licensee that Converts from PMRS to CMRS and has Paid Its Fees in Advance May File a Request for Refund with Its Initial CMRS Regulatory Fee Payment.**

3. The existing regulatory fee structure requires that licensees in services for which the annual regulatory fee is considered "small" by the FCC submit the entire fee due for the full term of their licenses when filing their initial, renewal or reinstatement applications.⁴ Such licensees pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested licenses.

4. As the Commission recognized in the FY 1996 Report and Order, all grandfathered PMRS licensees, as well as other Private Wireless Radio Service licensees, have prepaid their regulatory fees pursuant to that requirement.⁵ In the FY 1996 Report and Order, the Commission acknowledged that "any licensee that converts from private to CMRS and has paid its fees in advance for a period of years, may file a request for refund with its initial CMRS regulatory fee payment."⁶ However the FY 1997 NPRM does not include comparable language.

³ 47 U.S.C. § 332(c)(6).

⁴ See, 47 U.S.C. § 159(f)(1).

⁵ See, Report and Order, MD Docket No. 96-84, 61 FR 36,629 ¶ 21 (1996)("FY 1996 Report and Order").

⁶ Id.

AMTA requests that the FCC reaffirm in the FY 1997 Report and Order that such licensees are entitled to a refund and that the Commission outline the procedures for filing for such a refund.

B. Only Interconnected Mobile Units Should be Considered in Calculating the CMRS Regulatory Fee Obligation.

5. As explained herein, Congress provided a three year transition period pursuant to which private carrier licensees authorized prior to August 10, 1993, would continue to be regulated as private carriers until August 10, 1996.⁷ The FY 1996 Report and Order held that these grandfathered licensees would not be subject to "standard" fees for FY 1996.⁸ For the first time these licensees must submit "standard" fees for FY 1997, fees substantially higher than the "small" fees they were subject to for FY 1996 and previous years.

6. Consistent with its decision for FY 1996,⁹ the FY 1997 NPRM proposes to require CMRS service providers to submit a "standard" regulatory fee for all units operating under the authority of its CMRS licenses as of December 31, 1996.¹⁰ Neither the FY 1996 Report and Order nor the FY 1997 NPRM distinguish between those mobile units which are interconnected and those which are not. In rejecting such a distinction for FY 1996, the FCC explained that the regulatory fee was based upon a mobile provider's regulatory costs rather than the particular use that the provider makes of its frequencies.¹¹

7. AMTA urges the Commission to reconsider this issue for FY 1997. Contrary to

⁷ 47 U.S.C. § 332(c)(6).

⁸ FY 1996 Report and Order at ¶ 18.

⁹ Id. at ¶ 19.

¹⁰ 1997 NPRM ¶ 50 and Attachment F.

¹¹ FY 1996 Report and Order at ¶ 19.

the above assertion, in determining which Part 90 CMRS licensees submit a "small" fee payable when filing an initial, renewal or reinstatement application and which submit an annual "standard" fee, the Commission in fact looks to the particular use that the mobile provider makes of its frequencies.¹² For example, for purpose of regulatory fees, the Commission has treated and proposes to continue to treat regulatory fee payments by those SMRs which are not authorized to provide interconnected service as "small" fees subject to advance payment consistent with the requirements of Section 9(f)(2).¹³ In contrast, the regulatory fee payments by those SMRs which are authorized to provide interconnected service are treated as "standard" fees, payable in full on an annual basis.¹⁴ Thus, the Commission has already determined that the operational characteristic of a system is determinative in calculating regulatory fees.

8. Unlike cellular and paging systems in which all mobile or paging units have access to the Public Switched Telephone Network ("PSTN") and, therefore, are interconnected in accordance with the definition of CMRS, many heretofore private SMR operations offer only limited interconnection capability. As a whole, the large majority of units in service across the industry are not CMRS units.¹⁵ It is common for some subscribers on SMR or commercial 220 MHz systems to operate units with interconnection capability, while others have units which are only capable of communicating with a dispatcher and other vehicles in the fleet. Certain

¹² See, 47 U.S.C. § 159(f)(1).

¹³ FY 1997 NPRM at ¶ 47.

¹⁴ Id. at ¶ 49 and Attachment F.

¹⁵ According to the 1997 AMTA/Strategis Group SMR Industry Survey, the proportion of interconnected units in the SMR industry is only 24 percent of the total mobile units in service, including digital units placed into service by wide-area licensees. The State of SMR & Digital Mobile Radio: 1997, The Strategis Group at 144, § 9.1.2.

subscribers elect to permit interconnection for vehicles operated by owners or managers, while limiting the rest of the fleet to dispatch-only service.

9. The Commission has recognized already that certain systems classified as CMRS provide these distinctly different services over a single, integrated facility. In fact, it has acknowledged that, in certain offerings, revenues per subscriber are substantially higher for interconnected, as opposed to non-interconnected, service.¹⁶ To the extent that units on a particular system do not have interconnect capability, the service they receive cannot be classified as CMRS. Therefore, these units should not be included in the calculation of CMRS regulatory fee obligations. Since the Commission has chosen to base calculation of fees on a mobile count, the Association asks the FCC to clarify that only interconnected units need be considered in determining the applicable CMRS regulatory fee.

III. CONCLUSION

AMTA recommends that the FCC proceed expeditiously to finalize this proceeding, consistent with the clarifications and recommendations detailed above.

¹⁶ See, Notice of Proposed Rule Making, GN Docket No. 94-33, 59 FR 25432 n.83 (1994).

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 25th day of March, 1997, directed to be hand carried, a copy of the foregoing Comments to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Andrew S. Fishel, Managing Director
Federal Communications Commission
1919 M Street, N.W., Room 852
Washington, D.C. 20554

Dan Pytheon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Gerald Vaughn, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

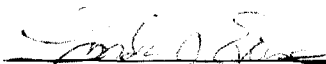
Karen Gulick, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Sandra Danner, Chief
Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7130-H
Washington, D.C. 20554

Dorothy Conway
Federal Communications Commission
1919 M Street, N.W., Room 234
Washington, D.C. 20554

* Timothy Fain
OMB Desk Officer
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503


Linda J. Evans

*Via First Class Mail